Filed 3/20/12 Legends Re Fund A v. Williams CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LEGENDS RE FUND A, LLC,	
Plaintiff and Respondent,	G045565
v.	(Super. Ct. No. 30-2008-00101894)
THOMAS HOWARD J. WILLIAMS,	O P I N I O N
Defendant and Appellant.	

Appeal from a judgment of the Superior Court of Orange County, Jane Myers, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded with directions.

Goe & Forsythe, Robert P. Goe and Elizabeth A. Larocque for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Thomas Howard J. Williams appeals from a judgment entered in favor of Legends Re Fund A, LLC (Legends) in accordance with a stipulation for entry of judgment executed as part of a settlement of the action. In short, Legends sued Williams on a loan guaranty, and the parties settled the underlying action for $150,000 payable in installments. As part of the settlement, Williams executed a stipulation for entry of judgment against him for $360,000 in the event of a default. When Williams failed to pay the full settlement amount, the trial court entered judgment pursuant to the stipulation. We agree with Williams in accordance with this court's decision in *Greentree Financial Group, Inc. v. Execute Sports, Inc.* (2008) 163 Cal.App.4th 495, 497 (*Greentree*), "the judgment constitutes an unenforceable penalty because it bears no reasonable relationship to the range of actual damages the parties could have anticipated would flow from a breach of their settlement agreement." We reverse and remand with directions to the trial court to reduce the judgment amount.

FACTS & PROCEDURE

In November 2005, Legends loaned $240,000 to Saddleback Southwest Homes Company, Inc. (Saddleback). The transaction included a credit agreement, secured promissory note, and security agreement between Legends and Saddleback (Loan Agreements). As part of the transaction, Williams executed a personal guaranty of Saddleback's loan repayment obligations (Guaranty Agreement).

Disputes concerning the Loan Agreements and Guaranty Agreement arose and Legends filed suit against Saddleback and Williams. Legends' complaint was not designated as part of the record on this appeal, but on our own motion, we take judicial notice of the complaint filed January 28, 2008. (Evid. Code, §§ 452, subd. (d); 459, subd. (a).) The Loan Agreements, signed by Williams as president of Saddleback, and the Guaranty Agreement are attached as exhibits to the complaint. In the complaint, Legends alleged the underlying Loan Agreements and Guaranty Agreement obligated Saddleback and Williams to repay the $240,000 loan plus $24,000 in loan fees, with annual interest at the rate of 25 percent. The complaint alleged that by the time the complaint was filed, the total amount owing was $412,500.

On October 28, 2008, Legends, Williams, and Saddleback entered into a settlement agreement (Settlement Agreement) of the underlying action. Legends agreed to dismiss the underlying action for $150,000 payable in annual installments over the next four years. The Settlement Agreement required Williams to execute a stipulation for entry of a $360,000 judgment (Stipulation) against him in the event of default in payment of the installments due under the Settlement Agreement, that being the amount Legends now alleged Williams owed under the Guaranty Agreement.

In April 2011, Legends requested the trial court enter judgment against Williams in accordance with the Stipulation. Legends' attorney provided a declaration stating Williams had paid the first $27,000 due under the Settlement Agreement (after Legends had waived $3,000 due as part of one of the first two installments), but failed to pay the $30,000 installment due by December 31, 2010. Legends sought a judgment of $344,826, comprised of the $360,000 amount provided for in the Stipulation, less $27,000 Williams had already paid, plus $10,491 prejudgment interest, $1,250 attorney fees, and $85 in costs. Williams filed an objection to entry of an excessive judgment. On May 26, 2011, the trial court entered judgment for Legends against Williams in the amount of $344,826.

DISCUSSION

Williams contends the $344,826 judgment, entered after he defaulted on the Settlement Agreement constitutes enforcement of an illegal penalty. Legends declined to respond to his appeal, advising this court by letter it would "submit and rest " on the findings and decision of the trial court.[1]

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1 Legends' "failure to file a respondent's brief means that we 'decide the appeal on the record, the opening brief, and any oral argument by the appellant' (Cal. Rules of Court, rule 8.220(a)(2), formerly rule 17(a)), examining the record and reversing

Greentree, *supra*, 163 Cal.App.4th 495, involved highly similar facts. (See also *Sybron Corp. v. Clark Hosp. Supply Corp.* (1978) 76 Cal.App.3d 896.) The complaint in plaintiff's breach of contract action against defendant alleged defendant failed to pay $45,000 due under the contract. The parties' settlement was memorialized in a stipulation for entry of judgment. The stipulation provided defendant would pay a total of $20,000 in two installments, but if defendant defaulted, plaintiff was entitled to have judgment entered against defendant for the full amount prayed for in the complaint. After defendant defaulted on the first installment payment of $15,000, plaintiff succeeded in having a judgment entered for $61,232, consisting of $45,000 in damages, $13,912 in prejudgment interest, $2,000 in attorney fees, and $320 in costs. (*Greentree, supra,* 163 Cal.App.4th at p. 498.)

In reversing and directing the trial court to reduce the judgment to $20,000, we concluded the stipulated judgment amount constituted an unenforceable penalty under Civil Code section 1671. (*Greentree*, *supra*, 163 Cal.App.4th at p. 500.) We explained under Civil Code section 1671, subdivision (b), a liquidated damages clause constitutes an unenforceable penalty "'if it bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach. The amount set as liquidated damages "must represent the result of a reasonable endeavor by the parties to estimate a fair average compensation for any loss that may be sustained." [Citation.] In the absence of such relationship, a contractual clause purporting to predetermine damages "must be construed as a penalty."' [Citation.]" (*Greentree*, *supra*, 163 Cal.App.4th at p. 499.)

The relevant breach to be analyzed "is the breach of the *stipulation*, not the breach of the *underlying contract*. [Citation.]" (*Greentree*, *supra*, 163 Cal.App.4th at p. 499.) In *Greentree,* the stipulation provided for payment of $20,000. But rather than

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only if prejudicial error is shown. [Citations.]" (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.)

attempt to anticipate the possible damages resulting from breach of the *stipulation*, the parties had designated the full amount claimed as damages in the underlying lawsuit. There was nothing in the record demonstrating plaintiff had "chances of complete success on the merits of [the underlying action,]" which we observed might well "explain, at least in part, why [plaintiff] was willing to accept in settlement less than half the amount demanded in the complaint." (*Id.* at pp. 499-500.) We concluded the $61,232 judgment bore "no reasonable relationship to the range of actual damages the parties could have anticipated from a breach of the stipulation to settle the dispute for $20,000. '[D]amages for the withholding of money are easily determinable—i.e., interest at prevailing rates. . . . ' [Citation.] The amount of the judgment, however, was more than triple the amount for which the parties agreed to settle the case." (*Id.* at p. 500.)

As in *Greentree*, here the parties stipulated to settle the underlying action for $150,000. Williams paid the first two installments totaling $27,000, and Legends waived $3,000 from the second installment, but thereafter Williams defaulted on payment of the remaining $120,000. The Stipulation amount of $360,000—almost two-and one-half times the settlement amount—bears no reasonable relationship to the range of damages the parties could have anticipated from breach of the stipulation to settle the case for $150,000, and thus constitutes an unenforceable penalty. Accordingly, we conclude it was error to enter judgment for more than the amount remaining due under the Settlement Agreement and the Stipulation, i.e., $120,000.

We turn to the disposition of this case. The judgment of $344,826, was comprised of the $360,000 Stipulation amount, less $27,000 already paid, plus $10,491 prejudgment interest, $1,250 attorney fees, and $85 in costs. In *Greentree, supra,* 163 Cal.App.4th 495, we concluded attorney fees and prejudgment interest were improperly included because the stipulation did not provide for an award of either in a action for enforcement of the stipulation, and it was not clear if the $20,000 settlement amount in that case included attorney fees and prejudgment interest. In this case, both the Settlement Agreement and the Stipulation specifically provide for an award of attorney fees and costs incurred to enforce either agreement, in addition to costs being appropriate under Code of Civil Procedure section 1032. Accordingly, both were properly included in the judgment. The Settlement Agreement and Stipulation are both silent on the award of prejudgment interest, and thus, we will adhere to our conclusion in *Greentree*, *supra*, 163 Cal.App.4th at page 502, that there is no basis for it to be included in the judgment.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to reduce the judgment against Williams to $121,335, comprised of $120,000 remaining on the settlement amount, $1,250 attorney fees, and $85 in costs, plus postjudgment interest. In the interests of justice, neither party shall recover costs on appeal.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.